

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-50900-2021 (O&M)
Date of Decision:- 1.8.2022

Mahant Kishori Dass Chela Mahant Siya Ram Dass & another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Ms. Sarika Gupta, Advocate for the petitioners.

Mr. S.S. Sandhu, AAG, Punjab.

GURVINDER SINGH GILL, J.

CRM-6078-2022

The application for placing on record judgment and decree dated 8.7.2019 and 19.10.2015 as Annexure P-7 and Annexure P-8 is allowed subject to all just exceptions.

Main case

1. The petitioners assail order dated 15.9.2016 (Annexure P-6) passed by the learned Additional Sessions Judge, Hoshiarpur whereby a revision petition filed by the petitioners challenging order dated 8.1.2014 (Annexure P-4) passed by Sub-Divisional Magistrate, Hoshiarpur under provisions of Section 145 Cr.P.C. has been dismissed.

2. A few facts necessary to notice for disposal of this petition are that a *Kalendra* dated 28.5.2008 (Annexure P-1) under Section 145 Cr.P.C. was recorded by the SHO, Police Station, Tanda wherein it is recorded that there is a religious place known as *Thakur Dwara Mandir* in which *Satsang* house has been constructed wherein ladies of the city hold *Satsang*. However, Mahant Kishori Dass claims right over the offerings at the said *Thakur Dwara Mandir*. It is alleged that on the night intervening 22.5.2008 and 23.5.2008, said Mahant Kishori Dass came to the *Satsang Ghar* accompanied by some more persons and a JCB machine and hurt the sentiments of the residents of the area and in respect of which FIR No. 87 dated 23.5.2008 under Sections 295-A, 380 IPC was registered against Mahant Kishori Dass wherein he was arrested and was granted bail. It is recorded therein that while on the one hand, said Mahant Kishori Dass stakes his claim over *Mandir Thakur Dwara*, on the other hand the residents of the area dispute the same and want to retain possession of the *Mandir* on account of which the situation became critical and any of the party could suffer loss at any moment. It is alleged that one section of the residents of the city had enforced a *bandh* in the city and the law and order situation had become precarious and any unfortunate incident could take place. It is further stated therein that a joint application had been submitted by various institutions and residents of the city that keeping in view the prevailing circumstances and to avoid conflict between both the parties, an order under provisions of Section 145 Cr.P.C. be passed and a receiver be appointed by the Government.

3. Upon the said *Kalendra*, being presented before the learned SDM, Dasuya, the matter was considered and the learned SDM vide order dated 29.5.2008 (Annexure P-2) while considering the *Kalendra*, ordered for appointment of Naib Tehsildar, Tanda as a receiver of the *Mandir Thakur Dwara* and issued directions to him to obtain possession of the same.
4. Thereafter, the learned SDM, Dasuya called for the report of Naib Tehsildar and also of SHO, Police Station, Tanda. Notice was issued to the parties who addressed their arguments. Upon considering the report of Naib Tehsildar and report of DSP regarding spot inspection, the learned SDM, Dasuya vide order dated 8.1.2014 (Annexure P-4) ordered that the order passed under Section 145 Cr.P.C. be kept intact. The operative portion of the said order dated 8.1.2014 (Annexure P-4) reads as follows :-

“The file was presented on 8.1.2014 and case was called for counsel for both the parties appeared. Written arguments and oral arguments of both the parties and advocates taken and report of Naib Tehsildar, Tanda, DSP Tanda regarding spot inspection were perused and the whole file has been gone into. The D.S.P. in his report has categorically stated that keeping in view the prevailing circumstances, open enquiry and it has been found that if order under Section 145 Cr.P.C. is revoked then the atmosphere in Tanda city can deteriorate and serious disputes can take place. In these circumstances, his opinion carries weight and that order under Section 145 Cr.P.C. should continue. I have come to the conclusion that keeping in view the facts brought on record by the D.S.P Tanda and secret information received, and keeping in view the fact that if order under Section 145 Cr.P.C. is revoked, there is a possibility of the atmosphere in Tanda city deteriorating, therefore, in order to keep maintain peace agree with the report of D..S.P, Tanda that order passed under Section 145 Cr.P.C in Thakur Dwara

Mandir Urmur Tanda be kept intact and I ordered accordingly. The file be completed and consigned to the record room.”

5. It may here be mentioned that the learned SDM while sending copy of order dated 8.1.2014 to Naib Tehsildar who had earlier been appointed as receiver, directed him to maintain the whole account of the *Mandir* regarding earnings and expenses.
6. The petitioners challenged the aforesaid order dated 8.1.2014 (Annexure P-4) by way of filing a revision petition in the Court of Sessions Judge, Hoshiarpur but the revision petition was dismissed vide order dated 15.9.2016 (Annexure P-6), which has been challenged by way of the instant petition.
7. The learned counsel for the petitioners has submitted that in the instant case, the Civil Court was seized of the dispute in hand inasmuch as the Murti Bhagwan Krishanji Mandir Thakur Dwara, Bhim Sen and Managing Society, Thakur Dwara had instituted a Civil Suit on 30.9.2008 (Annexure P-8) against Kishori Dass and others seeking declaration to the effect that the *Mandir* in question is in possession of Idol i.e. plaintiff no. 1 and that the sale deeds in favour of the defendants were illegal, null and void. The said suit was decreed vide judgment and decree dated 19.10.2015. The defendant Kishori Dass (petitioner in the present case) preferred an appeal in the Court of District Judge, Hoshiarpur challenging the said judgment dated 19.10.2015, which was dismissed by the learned District Judge, Hoshiarpur vide judgment and decree dated 8.7.2019 (Annexure P-7). It has been submitted that once Civil Court was seized of the matter, the proceedings under Section 145 Cr.P.C. could not continue. The learned counsel, in order

to substantiate aforesaid submission presses into service a judgment of Hon'ble Supreme Court reported as 2002(2) RCR (Criminal) 275 Ranbir Singh vs. Dalbir Singh.

8. I have heard the learned counsel for the petitioners and have also gone through the impugned orders.
9. This Court finds that proceedings under Section 145 Cr.P.C. were initiated pursuant to lodging of a *Kalendra* by the SHO, Police Station, Tanda on 28.5.2008 (Annexure P-1) on the basis of which the learned SDM, passed the initial order on 29.5.2008 (Annexure P-2) while noticing that there was a dispute between two parties regarding rights over the offerings at *Thakur Dwara Mandir* and that the situation was critical and there could be some loss. It was further recorded therein that infact a section of the residents have even enforced a *bandh* in the city. A receiver was also ordered to be appointed vide said order dated 29.5.2008 (Annexure P-2). The said order was confirmed vide order dated 8.1.2014 (Annexure P-4) passed by the learned SDM. The revision also stands admitted.
10. It is no doubt correct that the parties have also approached the Civil Courts wherein the findings have been returned against the petitioners by the Civil Judge (Junior Division), Dasuya vide judgment dated 19.10.2015 (Annexure P-8) and even the appeal has been dismissed vide judgment dated 8.7.2019 (Annexure P-7) against the petitioners. In other words, the Civil Courts has also ruled against the petitioners.
11. It, however, needs to be noticed that it was after the learned SDM had passed the initial order on 29.5.2008 (Annexure P-2) initiating the proceedings and appointing a receiver that civil litigation was initiated, which was initiated

by way of filing a Civil Suit on 30.9.2008 (Annexure P-8), as would be evident from the date mentioned in the said judgment dated 19.10.2015 (Annexure P-8). In these circumstances, the petitioners cannot get any advantage from judgment passed in Ranbir Singh's case (supra) inasmuch as the proceedings under Section 145 Cr.P.C. had been initiated prior to filing of the Civil Suit and an order appointing receiver had also been passed. Thus, filing of a Civil Suit cannot have the effect of setting at naught the entire proceedings initiated under Section 145 Cr.P.C. In this context, a reference may be made to a judgment of Hon'ble Supreme Court reported as 2009 (3) RCR (Criminal) 459 – M.P. Peter vs. State of Kerala and others wherein in a case where proceedings under Section 145 Cr.P.C. had been initiated before the Executive Magistrate by the police and civil proceedings claiming possession and ownership had also been initiated by the parties, it was held that any order passed by the Executive Magistrate under provisions of Section 145 Cr.P.C. would be subject to ultimate decision of the suit filed in the Civil Court and that while a decision by criminal Court does not bind Civil Court, the *vice-versa* is not true. In the cited case while the proceedings under Section 145 Cr.P.C. had been initiated in the year 1996, the suit has been filed much later i.e. in the year 2007. In the said judgment, it was nowhere observed that mere filing of Civil suit would put an end to the proceedings initiated under provisions of Section 145 Cr.P.C. In any case, even in the civil proceedings findings have been returned against the petitioners. Still further, the instant petition has been filed after a delay of about 5 years of passing of the impugned order on 15.9.2016 (Annexure P-6). In fact, the revision petition had been filed after

the petitioners lost in the civil Court when his appeal was dismissed on 8.7.2019.

12. In view of the discussion made above, this Court does not find any ground for interfering with the impugned order dated 15.9.2016 (Annexure P-6) and the same is hereby upheld. The petition is dismissed.

1.8.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No